

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
  
FOR THE DEPARTMENT OF COMMERCE

In the matter of Scenic Title and Abstract,  
Inc., Kevin Eckholm, Sharyn K. Hill and  
Linda E. Eckholm

**FINDINGS OF FACT,  
CONCLUSIONS AND  
RECOMMENDATION**

This matter came on for an evidentiary hearing before Administrative Law Judge Eric L. Lipman on October 22, 2009, at the Saint Paul offices of the Office of Administrative Hearings.

Michael J. Tostengard, Assistant Attorney General, appeared on behalf of the Minnesota Department of Commerce (Department). Ronald L. Kopeska, Kopeska Law Office, appeared on behalf of the Respondents Scenic Title & Abstract, Inc., Kevin Eckholm, Linda Eckholm and Sharyn K. Hill (Respondents).

Following the receipt of post-hearing submissions on October 28 and November 3, 2009, the hearing record closed.

**STATEMENT OF THE ISSUES**

1. Did the Respondents fail to remit title insurance premiums in violation of Minn. Stat. §§ 60K.43, subd. 1(4) and (8) and 72A.20, subd. 18 (2008), and Minn. R. 2795.1000 (2007)?

2. Do the Respondents' business dealings demonstrate financial irresponsibility in violation of Minn. Stat. §§ 45.027, subd. 7(a)(4), and 60K.43, subd. 1(2) (2008)?

3. Did Respondent Kevin D. Eckholm undertake unlicensed abstracter activity in violation of Minn. Stat. § 386.62 (2008)?

4. Did Respondent Scenic Title & Abstract, Inc. fail to pay state income tax and thereby violate Minn. Stat. § 60K.43, subd. 1(14) (2008)?

5. Did the Respondents improperly withhold, misappropriate or convert monies or properties received in the course of doing insurance business, and thereby violate Minn. Stat. § 60K.43, subd. 1(4) (2008)?

6. Did the Respondents fail to observe high standards of commercial honor, and just and equitable principles of trade, in violation of Minn. R. 2795.1000 (2007)?

7. Did Respondent Sharyn K. Hill demonstrate untrustworthiness in violation of Minn. Stat. § 45.027, subd. 7(4) (2008)?

The Administrative Law Judge concludes that regulatory discipline is appropriate for the licenses of Scenic Title, and some, but not all, of the licenses held by Kevin D. Eckholm.

Based upon the evidence in the hearing record, the Administrative Law Judge makes the following:

### **FINDINGS OF FACT**

1. On October 2, 2006, Respondents Kevin D. Eckholm and Sharyn K. Hill applied for a Resident Agency Title Insurance Producer's license in the name of Scenic Tile and Abstract, Inc ("Scenic Title"). Mr. Eckholm and Ms. Hill were listed as the Responsible Individuals for the corporate entity.<sup>1</sup>

2. On or about October 23, 2006, Kevin D. Eckholm, acting on behalf of Scenic Title, executed a Consent Order wherein he agreed to remit a \$7,500 civil penalty for operating an unlicensed title insurance agency for a period of seven years. As part of the Consent Order, Mr. Eckholm acknowledged that Scenic Title had "solicited, negotiated and sold insurance products in the State of Minnesota without being properly licensed ...."<sup>2</sup>

3. On October 23, 2006, the Department of Commerce issued a Resident Agency Title Insurance Producer's license to Scenic Tile and Abstract, Inc. This license was denominated as 4008260. The agency license expired on October 31, 2009.<sup>3</sup>

4. Both Mr. Eckholm and Ms. Hill had previously obtained individual Resident Insurance Producer Licenses in January of 2000. The most recent version of their individually-held licenses – numbered 20206744 and 20206742, respectively – expired on October 31, 2009.<sup>4</sup>

5. Similarly, Mr. Eckholm and Ms. Hill previously held Abstracter licenses issued by the Minnesota Department of Commerce. These licenses expired on June 30, 2007.<sup>5</sup>

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<sup>1</sup> Ex. 1.

<sup>2</sup> Ex. 3.

<sup>3</sup> Exs. 1 and 2.

<sup>4</sup> Ex. 1; *compare*, Minn. Stat. § 60K.38 (2) (2008)

<sup>5</sup> *Id.*

6. Respondents Kevin D. Eckholm, Linda E. Eckholm and Sharyn K. Hill hold commissions as Notary Publics. These commissions are due to expire on January 27, 2010.<sup>6</sup>

7. In 2007, Ms. Hill relinquished her duties as a corporate officer of Scenic Title.<sup>7</sup>

8. None of the Department's submissions reference a statutory or regulatory requirement obliging insurance licensees to apprise the Department of changes in the roster of corporate officers within licensed businesses.

9. For a company of its size and revenues, Scenic Title has significant business debts. In 2009, both Federal Express and Blue Cross and Blue Shield of Minnesota won judgments against Scenic Title following serial failures to pay for services that these companies rendered to Scenic Title. Federal Express won a judgment in the amount of \$4,917.79. Blue Cross and Blue Shield of Minnesota won a judgment in the amount of \$4,088.00. In each instance, the creditors attached the bank accounts of Scenic Title in order to recover the past-due amounts.<sup>8</sup>

10. As of October 7, 2009, Scenic Title had not remitted \$25,928.46 in title insurance premiums to its underwriter Land America – Lawyers Title Insurance Corporation ("Land America"). Land America is an affiliate of the Fidelity National Title Insurance Company.<sup>9</sup>

11. Under its Agency Agreement with Land America, Scenic Title was obliged not to "permit any delay or deferral of the payment of premiums" except as expressly authorized by Land America. Further, Scenic Title was obliged to remit premiums to Land America on a monthly basis.<sup>10</sup>

12. In 2006, 2007, 2008 and 2009, Scenic Title failed to remit premiums due and owing to Land America. As of the date of the evidentiary hearing, there were approximately 100 transactions, spanning various years, as to which Scenic Title has yet to remit the premium owed to Land America.<sup>11</sup>

13. Additionally, Scenic Title has approximately \$24,000 in unpaid invoices in favor of other creditors.<sup>12</sup>

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<sup>6</sup> *Id*; Minn. Stat. § 359.02 (2008).

<sup>7</sup> Testimony of Sharyn K. Hill.

<sup>8</sup> Ex. 4; Testimony of Kevin Eckholm; Testimony of Linda Eckholm.

<sup>9</sup> Exs. 8 and 9; Test. of K. Eckholm; Test. of L. Eckholm.

<sup>10</sup> Ex. 10.

<sup>11</sup> Exs. 8 and 9.

<sup>12</sup> Exs. 4, Testimony of John Cameron Jenkins; Test. of K. Eckholm; Test. of L. Eckholm.

14. The amounts in the various accounts of Scenic Title are not sufficient to cover the arrearages to Land America or its other creditors.<sup>13</sup>

15. Scenic Title did not timely file withholding tax returns for the period of January through March 2008, April through June 2008, July through September 2008, October through December 2008, January through March 2009 and April through June 2009.<sup>14</sup>

16. On or about August 13, 2009, Mr. Eckholm completed an abstract for a property in Ely, Minnesota at a time when he was not a licensed abstracter.<sup>15</sup>

17. On or about the same time, Minnesota Department of Commerce investigator John Cameron Jenkins was contacted by Melissa Grumdahl, an employee of Scenic Title. Ms. Grumdahl asserted that Scenic Title was not remitting title insurance payments contemporaneously with the closings as they occurred and that there were hundreds of policies as to which premiums had not been remitted to Land America.<sup>16</sup>

18. On August 25, 2009, and again on September 18, 2009, Mr. Jenkins visited Scenic Title's office in Two Harbors, Minnesota to interview employees and review files.<sup>17</sup>

19. During the September 18, 2009 visit, Mr. Jenkins administered a Tennessean warning to Mr. Eckholm and received a statement from him.<sup>18</sup>

20. The Department did not offer the September 18, 2009 statement for inclusion into the hearing record.<sup>19</sup>

21. On October 8, 2009, following the issuance of the Statement of Charges in this matter, Ms. Hill submitted a sworn affidavit to the Department. The Affidavit asserted, among other items, that:

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<sup>13</sup> Exs. 5 and 13.

<sup>14</sup> Ex. 7.

<sup>15</sup> Ex. 11; Test. of K. Eckholm.

<sup>16</sup> Test. of J.C. Jenkins.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* The term "Tennessean warning" is used to describe the Minnesota Governmental Data Practices Act procedure which obliges government officials seeking private or confidential data from private citizens to warn those individuals of their rights and responsibilities with respect to providing the requested information. See, e.g., Minn. Stat. § 13.04 (2) (2008); *Edina Educ. Ass'n v. Board of Educ. of Indep. Sch. Dist. No. 273*, 562 N.W.2d 306, 311 (Minn. App.) *review denied* (Minn. 1997).

<sup>19</sup> Test. of J.C. Jenkins.

- (a) "Sharyn K. Hill is not now an officer of Scenic Title & Abstract, Inc. and has not been an officer of Scenic Title & Abstract, Inc. since April 2007, at the latest."
- (b) "Sharyn K. Hill[s] last pay from Scenic Title & Abstract, Inc. was issued sometime in April 2007."<sup>20</sup>

22. On or about August 15, 2007, September 17, 2007 and October 1, 2007, Ms. Hill received payroll "draw checks" in the amount of \$1,600.<sup>21</sup>

Based upon these Findings of Fact, the Administrative Law Judge makes the following:

### **CONCLUSIONS**

1. The Administrative Law Judge and the Commissioner of Commerce have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50, 45.027 and 60K.43.

2. The Notice of Hearing was proper and the Department has fulfilled all procedural requirements for presenting this matter for a decision.

3. The commissioner may deny, suspend, or revoke the authority or license of a person subject to the duties and responsibilities entrusted to the commissioner, or censure that person, if the commissioner finds that the order is in the public interest and the person has engaged in an act or practice, whether or not the act or practice directly involves the business for which the person is licensed or authorized, which demonstrates that the applicant or licensee is untrustworthy, financially irresponsible, or otherwise incompetent or unqualified to act under the authority or license granted by the commissioner.<sup>22</sup>

4. The commissioner may restrict, censure, suspend, revoke, or refuse to issue or renew an insurance producer's license, or may levy a civil penalty, for any one or of the following causes:

- (a) improperly withholding, misappropriating, or converting any money or properties received in the course of doing insurance business;
- (b) using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility, whether or not involving the business of insurance in this state or elsewhere; or,

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<sup>20</sup> Ex. 14; Test. of S. Hill.

<sup>21</sup> Ex. 17; Test. of L. Eckholm.

<sup>22</sup> See, Minn. Stat. § 45.017, subd. 7(a)(4) (2008).

- (c) failing to pay state income tax or comply with any administrative or court order directing payment of state income tax.<sup>23</sup>

5. By failing to timely complete nearly 100 separate transactions and failing to maintain sufficient account balances so as to timely remit premiums to Land America, Respondents Scenic Title and Kevin D. Eckholm improperly withheld monies Scenic Title received during the course of doing insurance business.<sup>24</sup>

6. The record does not support a finding that Linda Eckholm had both sufficient knowledge of the circumstances and control of Scenic Title to complete these transactions.<sup>25</sup>

7. The record does not support a finding that Sharyn Hill had both sufficient knowledge of the circumstances and control of Scenic Title to complete these transactions.<sup>26</sup>

8. By failing to timely complete nearly 100 separate transactions, and to timely remit premiums that were due and owing to Land America, Respondents Scenic Title and Kevin D. Eckholm demonstrated a lack of financial responsibility and qualification to act as title insurance producers.<sup>27</sup>

9. The record does not support a finding that Linda Eckholm had both sufficient knowledge of the circumstances and control of Scenic Title to insist upon proper management of the corporation.

10. The record does not support a finding that Sharyn Hill had both sufficient knowledge of the circumstances and control of Scenic Title to insist upon proper management of the corporation.

11. Respondent Kevin D. Eckholm undertook the duties of an abstracter at a time that his Abstracter license had lapsed.<sup>28</sup>

12. The record does not support finding that Scenic Title failed to pay state income tax in violation of Minn. Stat. § 60K.43, subd. 1(14) (2008).

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<sup>23</sup> See, Minn. Stat. § 60K.43, subd. 1(4), 1(8), and 1(14) (2008).

<sup>24</sup> Compare, Minn. R. 2795.0800, 1 (B) (2007) ("A supervising agent shall have the duty to ... promptly remit all premiums and return premiums, refunds, claim settlements, or other money or things of value in the agents' possession obtained as a result of an insurance transaction and due and payable to any person, firm, or insurer"); Minn. R. 2795.1300 (2007) ("An agent who receives funds from a client in connection with an insurance transaction receives and holds those funds in a fiduciary capacity").

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> Ex. 1; Test. of K. Eckholm.

13. Mr. Eckholm improperly withheld monies that were received in the course of doing insurance business in violation of Minn. Stat. § 60K.43, subd. 1(4) (2008). His management of the firm fell below the standards of fair dealing and ordinary insurance practice.<sup>29</sup>

14. The record does not support a finding that Linda Eckholm had both sufficient knowledge of the circumstances and managerial control of Scenic Title to insist upon prompt disbursement of monies that were received in the course of doing insurance business.

15. The record does not support a finding that Sharyn Hill had both sufficient knowledge of the circumstances and managerial control of Scenic Title to insist upon prompt disbursement of monies that were received in the course of doing insurance business

16. Scenic Title and Mr. Eckholm failed to observe just and equitable principles of trade in violation of Minn. R. 2795.1000 (2007).

17. The record does not support a finding that Linda Eckholm had both sufficient knowledge of the circumstances and managerial control of Scenic Title to insist that the agency observe equitable principles of trade.

18. The record does not support a finding that Sharyn Hill had both sufficient knowledge of the circumstances and managerial control of Scenic Title to insist that the agency observe equitable principles of trade.

19. The record does not support finding that Sharyn Hill demonstrated untrustworthiness in violation of Minn. Stat. § 45.027, subd. 7(4) (2008).

20. The record does not support a finding that Kevin D. Eckholm is unfit to exercise the duties of a notary public.

Based upon these Conclusions, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

### **RECOMMENDATION**

The Administrative Law Judge recommends that the Commissioner impose discipline upon the:

- (a) Resident Agency Title Insurance Producer's license of Scenic Title;
- (b) Resident Title Insurance Producer's license of Kevin D. Eckholm; and,

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<sup>29</sup> See, Minn. Stat. § 45.027, subd. 7(4) (2008); Minn. Stat. § 60K.43, subds., 1(2), 1(4) and 1(8) (2008); Minn. Stat. § 72A.20, subd. 18 (2008); Minn. R. 2795.0800, 1 (B) (2007); Minn. R. 2795.1000 (2007); Minn. R. 2795.1300 (2007).

(c) Abstracter's license of Kevin D. Eckholm.

Dated: November 23, 2009

/s/ Eric L. Lipman  
ERIC L. LIPMAN  
Administrative Law Judge

Reported: Digital Recording  
No transcript prepared

### NOTICE

This report is a recommendation, not a final decision. The Commissioner of the Minnesota Department of Commerce will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Glenn Wilson, Commissioner, Department of Commerce, 85 Seventh Place East, Suite 500, St. Paul, MN 55101 to learn about the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.



## **MEMORANDUM**

During the evidentiary hearing, and through their written submissions, Respondents argue that the hearing does not establish the claimed misconduct, and that if there were regulatory violations, the lapses were not so serious as to warrant discipline. The Department's claims and the Respondents' defenses are addressed in turn below.

### **Timely Remittance of Insurance Premiums and Payments to Creditors**

The hearing record makes clear that in late 2008, Scenic Title's business model collapsed. During the downturn in the economy, Mr. Eckholm apparently hoped to hold the family business together by forestalling payments that were owed to Scenic Title's creditors – including Land America. It was improper for Scenic to operate so long and far on the monies that it owed to others. As reflected by both the total amounts that were withheld, and a comparison between the amounts withheld and the sums that Scenic Title had in its accounts, it is clear that Mr. Eckholm's management of the firm fell below the standards of fair dealing and ordinary insurance practice.<sup>30</sup> The imposition of regulatory discipline is appropriate against the Title Insurance Producer's licenses held by Scenic Title and Mr. Eckholm.

### **Unlicensed Abstracter Activity**

At the evidentiary hearing, Mr. Eckholm conceded that he undertook the duties of a licensed abstracter as to the Lozar property in Ely, Minnesota in August of 2009. He asserts that he was not aware that his license had lapsed at the time that he completed this work.

The Department likewise maintains that Mr. Eckholm undertook unlicensed abstracter activities in approximately 100 other transactions following the lapse of his license; and that Mr. Eckholm acknowledged the same in a sworn statement rendered to Investigator Jenkins on September 18, 2009.<sup>31</sup>

The difficulty here is that Mr. Eckholm denies this further claim and the hearing record does not include either a copy of Mr. Eckholm's prior sworn statement or evidence of the work that Mr. Eckholm performed as part of these other transactions.

The out-of-court statements attributed to Mr. Eckholm by the Department are not the sort of hearsay upon which reasonable and prudent persons are accustomed to rely in the conduct of their serious affairs.<sup>32</sup>

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<sup>30</sup> See, Minn. Stat. § 45.027, subd. 7(4) (2008); Minn. Stat. § 60K.43, subds., 1(2), 1(4) and 1(8) (2008); Minn. Stat. § 72A.20, subd. 18 (2008); Minn. R. 2795.0800, 1 (B) (2007); Minn. R. 2795.1000 (2007); Minn. R. 2795.1300 (2007).

<sup>31</sup> Test. J.C. Jenkins.

<sup>32</sup> See, Minn. R. 1400.7300, subp. 1 (2007).

The Department also points to Ms. Grumdahl's electronic mail message of September 24, 2009, asserting that Mr. Eckholm performed unlicensed abstract work in 12 separately numbered transactions.<sup>33</sup> This message is likewise unpersuasive. The message merely lists 12 transaction numbers and the recipients of certain work. It does not establish abstract work was undertaken in the cited transactions or that Mr. Eckholm performed this work at a time when his license had lapsed. The out-of-court statement of Ms. Grumdahl is not the sort of hearsay upon which reasonable and prudent persons are accustomed to rely in the conduct of their serious affairs.<sup>34</sup>

On this record, it is recommended that regulatory discipline only follow from the one acknowledged instance of unlicensed abstracter activity.

### **Failure to Pay State Income Taxes**

The only evidence in the hearing record that addresses state taxes is Exhibit 7. It establishes that Scenic Title failed to file a series of quarterly tax returns in 2008 and 2009, but is silent as to what sums were due and left unpaid.

As Respondents point out, the failure to timely submit returns does not establish that Scenic Title "fail[ed] to pay state income tax or comply with any administrative or court order directing payment of state income tax," within the meaning of Minn. Stat. § 60K.43, subd. 1(14) (2008).<sup>35</sup>

### **Regulatory Discipline of the Notary Commissions**

The Department urges regulatory discipline against the notary commissions of Mr. Eckholm, Ms. Eckholm and Ms. Hill.

Discipline is sought against the Eckholms on the grounds that their management of Scenic Title, although it was in a business different than authorized by their notary commissions, demonstrated that they are "financially irresponsible, or otherwise incompetent or unqualified to act under the authority or license granted by the commissioner."<sup>36</sup> Discipline is sought against Ms. Hill because the Department asserts that her October 8, 2009 affidavit in this matter is false; and as such, is inconsistent with the obligations and duties of a notary public.

In the view of the Administrative Law Judge none of these claims is well taken. The relationship between the mismanagement of Scenic Title's finances and the faithful duties of the notary commission is tenuous at best. When significant regulatory

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<sup>33</sup> Ex. 6.

<sup>34</sup> See, Minn. R. 1400.7300, subp. 1 (2007).

<sup>35</sup> Compare, Minn. Stat. §§ 289A.18, subd. 1, 289A.19 and 289A.20, subd. 1 (2008).

<sup>36</sup> See, Minn. Stat. § 45.027, subd. 7(a)(4) (2008).

discipline is sought against a license holder, the state appellate courts have required a closer nexus between the misconduct, and the duties of the regulated profession, than is presented by this record.<sup>37</sup>

While it is true that Ms. Hill did receive payroll “draw checks” from Scenic Title for August, September and October of 2007 – a fact that is at odds with her October 2009 declaration that the last pay she received from Scenic Title was in April of 2007 – it is most likely that this statement was an innocent error. The record does not support the claim that this assertion was made to provide “false, misleading, or incomplete information to the commissioner ....”<sup>38</sup>

Because the principal failures in this case relate to Mr. Eckholm’s management and operation of the title insurance business, the Department’s regulatory discipline should focus upon addressing these lapses.

**E. L. L.**

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<sup>37</sup> Compare generally, *In re Haugen*, 278 N.W.2d 75, 80-81 (Minn. 1979); *In re Insurance Licenses of Kane*, 473 N.W.2d 869, 877-78 (Minn. App.) review denied (Minn. 1991); accord, *In re Revocation of Family Child Care License of Burke*, 666 N.W.2d 724, 728 (Minn. App. 2003).

<sup>38</sup> See, Minn. Stat. § 45.027, subd. 7(a)(3) (2008).